

**Frequently Asked Questions
From
Clerk's Use Tax Training
July 2007**

Motor Vehicle Usage Tax

Sales Tax

Use Tax

MVU FAQ

1. Is the usage tax refundable if an individual titles a salvage vehicle and pays Motor Vehicle Usage Tax and later decides to junk the vehicle because the vehicle is not worth repairing?

No. There are three instances where a Motor Vehicle Usage Tax refund will apply according to law. The law is stated as follows:

KRS 138.460

(9) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the department as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the first titling or registration. A person shall not be entitled to a refund unless the person has filed with the department a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the department a report from the dealer or manufacturer identifying the vehicle that was replaced.

2. Can the Parent/Child exemption be used if a vehicle is titled and registered in the parent's name and then transferred to their child who will only be titling the vehicle?

Yes. When the child titles the vehicle, the Parent/Child exemption will apply.

3. When an individual does a title only and a Motor Vehicle Usage Tax exemption applies, what will happen when the individual comes back to register the vehicle?

Since motor vehicle usage tax is collected at time of title, any applicable exemption must be applied during this transaction. When the individual later registers the vehicle the taxing transaction has already been completed; therefore, no tax would be due.

4. Scenario #9 of the Usage Tax handout given at the training meetings provides the following description: An individual titles a vehicle and pays Usage Tax, but the person does not have insurance, so the vehicle is not registered. The customer comes back several days later to complete the registration process. During the registration process the customer wants to add his girlfriend's name to the title. Is Usage Tax due again on this new transaction? The answer is yes, however what is the value based on?

In most cases the value will be based on the retail value from the NADA guide, however if the customer comes in with a correctly completed Affidavit of Total Consideration, this document can be used. In this situation the only correct way for the Affidavit to be filled out is for **Gift** to be written in the Sales Price section with the right and left side filled out and signed. The left side should be filled out by the individual previously on the title while the right side should be filled out by the individual previously on the title and the girlfriend being added.

- 5. If an individual has a KY title (form TC 96-182) partially completed, but then takes the Affidavit of Total Consideration for a Motor Vehicle (form 71A100) and fills in the requested information, will the transaction be accepted with two partially completed forms?**

No. Both forms are legal documents. If either legal document is not filled out with the requested information, then it is void. Only one form can be used and submitted to declare the total consideration of a vehicle.

- 6. An individual does a title only claiming to use the Historical Vehicle exemption and pays \$6.00. That individual comes back later to register the vehicle, but he does not put a historical plate on the vehicle. Can the clerk change the code from HV to another Usage Tax Code at time of registration?**

Yes. When the individual comes back to register the vehicle, the code may be changed in the Usage Value field. Credit will be given for the \$6.00 previously paid and additional motor vehicle usage tax will be calculated based on the value minus the credit.

- 7. If an individual does a title only before July 23, 2007 will the Sales Tax credit be given after the new laws go into effect when that same individual comes back to register the vehicle?**

Yes, the individual who paid the Sales Tax will receive tax credit when the title holder registers the vehicle. The law does not affect sales tax credits.

- 8. Where can a copy of the Sales and Use Tax, as well as the Motor Vehicle Usage Tax statutes be found?**

The law for all three taxes can be found online at www.lrc.ky.gov. From there go to Kentucky Law and then to Kentucky Revised Statutes (KRS).

The laws for Motor Vehicle Usage Tax are located under KRS 138.450, 138.460, with exemptions under KRS 138.470.

Sales and Use tax laws are located under KRS Chapter 139.

- 9. When do the Usage Tax codes apply and when do the Sales Tax codes apply?**

The Usage Tax codes will apply to any transaction on a Motor Vehicle, whether it is a title only or a full registration. The Sales Tax codes will apply only to Motor Vehicle title transactions where an NHU is correctly filled out and submitted by the customer.

- 10. How do I handle a transaction where a dealer purchases a vehicle from another dealer and the vehicle has not yet been titled and has only a manufacturers' certificate of origin (C of O)?**

If the purchaser is a licensed dealer with the Motor Vehicle Commission, and there is not a title on the vehicle, the purchasing dealer may claim a S2 exemption on a NHU affidavit and attach a completed resale certificate. The purchasing dealer may be an automotive mobility dealer or a restricted license dealer who is purchasing a vehicle with a C of O strictly for modification and resale.

SALES TAX FAQ

1. When is sales tax collected?

Sales tax is due on a title only transaction when the customer presents an Affidavit of Non-highway Use (NHU), Form 72A007, claiming the vehicle will be used exclusively off-road.

2. Who completes the NHU?

It is the customer that must initiate the claim when the vehicle being titled is exclusively for off-road use. The customer must complete the top half of Form 72A007 and the clerk will complete the bottom portion. If sales tax is due, the clerk collects 6% of the sales price and forwards a copy of the completed form with the other weekly mail sent to Frankfort.

3. What codes are used on a NHU?

Sales tax codes or sales tax exemption codes are used in connection with a title only transaction that is exclusively for off-road use. AVIS defaults to collection of Motor Vehicle Usage tax at the time of title only or registration for all motorized vehicles. A list of the separate tax codes is in the training material previously provided by the Department.

4. What is the duty of the clerk in regard to claimed sales tax exemptions?

If a customer claims exclusive off-road use for a title only vehicle, the clerk checks the applicable exemption box based on the customer's exemption claim.

Occasional Sale (S1) - the purchaser and seller information must be complete with the purchaser attesting to the sale price of the property.

For Resale (S2) - a completed Kentucky resale certificate (Form 51A105) must be attached.

Purchase Exemption (S3) - a completed purchase exemption certificate (Form 51A126) must be attached.

Apportioned Vehicles (S4) - list the declared weight.

Over 44,001 lbs. (S6) - list the declared weight.

Credit for Sales Tax Paid Out of State (S8) - attach a copy of the receipt from the seller.

Sales Tax Paid to a Kentucky Vendor (S9) - attach a copy of the receipt from the seller.

5. Can sales tax be refunded?

Yes, sales tax may be refunded through the clerk's office if the transaction occurs within the same week as the original transaction. If outside the week of the original transaction, forward the tax paid documentation in a separate mailing to the Department of Revenue, Division of Sales and Use Tax, PO Box 181, Frankfort, KY 40602, Attention: David McKee. Also include a completed Sales and Use Tax Refund Application (Form 51A209).

Motor vehicle usage tax refund claims are to be forwarded to the Motor Vehicle Usage Tax Section, Attention: Guy Reynolds.

6. Are the NHU affidavits and documentation to be sent separately from the motor vehicle usage tax documents?

No. The NHU affidavits and attachments should be bundled separately but forwarded in the same envelope or box as the Motor Vehicle Usage and Use Tax documents.

USE TAX FAQ

1. What is the use tax and when is the clerk required to collect use tax?

Use tax is the backstop to the sales tax, and is imposed at the rate of 6% of tangible personal property bought from an out of state retailer for storage, use, or other consumption in Kentucky. (KRS 139.310, 139.330). HB 380 created KRS 139.778 that requires the county clerk to collect the use tax on tangible personal property (boats, utility trailers, ATVs, manufactured homes, off-road motorcycles, etc.) purchased from an out-of-state retailer and offered for titling or first registration in Kentucky.

2. Is the use tax collected just on purchases of new property?

No. Use tax collected by the clerks may be for new or used tangible personal property that has been purchased from an out-of-state retailer for use in Kentucky and offered for titling or first registration in this state.

3. What if an out of state resident purchases, titles/registers, and uses a boat or trailer in his home state and then later moves to Kentucky? Is the use tax applicable when the new resident titles or registers the property in Kentucky?

No. If the out-of-state resident makes the purchase and first use of tangible property out-of-state and then later moves into Kentucky with the property, then the property was subject to tax in the state of first use and Kentucky use tax is not applicable. The code "NS" (no sale) is designed to apply in these situations. The NS code must be entered into the use tax code field and no use tax will be collected.

4. What are the tax consequences when an out of state resident purchases a boat, manufactured home, etc. from a retailer in his home state for use in Kentucky?

When the out of state resident titles and/or registers the property in this state, the 6% Kentucky use tax is due. In this scenario, the only acceptable use tax codes for the transaction are the UU code for the full collection of Kentucky tax or the U8 code if the customer produces a receipt demonstrating that tax was paid to the retailer at the time the property was purchased.

5. How does the clerk allow for credit of sales tax paid in another state?

If a person purchases tangible property from an out of state retailer for use in Kentucky and pays that seller the state sales tax, then the clerk will allow credit for the state sales tax properly paid, up to 6%, provided a sales receipt or invoice is produced to verify the tax paid. The credit code in this situation is U8. The amount of sales tax credit allowed must be entered in the credit field. A copy of the receipt or invoice must be attached to Form 51A280 (Out of State Purchase-Use Tax Affidavit).

No credit is allowed for local sales taxes paid. The state sales tax rates of Kentucky border states are as follows: Indiana-6%, Illinois-6.25%, Ohio-5.5%, West Virginia-6% Virginia-4%, Tennessee-7%, Missouri-4.225% . No credit above these rates should be allowed on property purchased from vendors collecting tax in these respective states. For a complete list of all state sales tax rates, you may go to the FTA website at: <http://www.taxadmin.org/fta/rate/sales.html>.

6. How does the clerk allow credit for Kentucky use tax paid before titling or first registration?

In some cases, the Kentucky taxpayer may have paid the use tax via form 51A113 (O), Consumer's Use Tax, directly to the Commonwealth of Kentucky. It is also possible for a customer to have paid use tax on the Kentucky individual income tax return. If use tax was previously paid before titling or first registration, the customer must present a copy of the tax return showing use tax previously reported and paid on the property in question. The clerk then uses the UC code and attaches a copy of the return to the Out of State Purchase-Use Tax Affidavit.

7. How does the clerk handle a use tax payment forwarded directly to the clerk by an out-of-state retailer?

The customer must submit proof of payment, pay the applicable use tax, or claim an applicable exemption at the time of titling or first registration. Out of state dealers who are remitting payments on behalf of their Kentucky customers must forward the payment directly to the Department of Revenue like any other retailer and provide their customers a receipt with proof of tax paid. The customer should keep a copy of the receipt as proof of tax payment. The clerk is not required to accept, hold or track payments forwarded by out-of-state dealers for boats, manufactured homes, ATVs, etc. that may eventually be offered for title or first registration in Kentucky. The new use tax collection procedures adopted by the county clerks is not intended to change the normal tax collection responsibilities of in-state or out of state retailers in any way. Please contact the Division of Sales and Use Tax at 502-564-5170 if any retailers forward their sales and use tax payments to your office.

8. How does the clerk handle a bundled transaction? Example: John Doe buys a boat and trailer from out of state for \$10,000 with no breakdown between the amounts paid for the boat and trailer.

The clerk must enter the boat, trailer, and motor (if applicable) into the AVIS and BTRS systems as normal. The applicable use tax must be collected on each type of tangible property. Credit will be allowed and prorated as applicable. If the customer does not have a breakdown, a proration of the purchase price may be assigned to each item based on estimated property values from a reliable reference guide. A rule of thumb is a trailer may be estimated at 10 to 20% of a total sale that includes boat and trailer. The breakdown of purchase price between components of the transaction must equal the total purchase price shown on the invoice or receipt.

9. If the purchaser has no sales receipt or invoice, what documentation may be used to establish a purchase price of tangible personal property?

Documentation must be provided by the purchaser to establish the purchase price. A cancelled check or buyer's order will substitute for a sales invoice or receipt. It is up to the purchaser to provide some verification of the purchase price.

10. What types of trailers are exempt as gooseneck or fifth wheel trailers?

The term "gooseneck" and "fifth wheel" trailer refer to a trailer that is designed to be mounted in the back of a truck and is intended to carry freight or merchandise of greater than 1,000 pounds and is exempt from sales and use tax per KRS 139.470(22). A tractor trailer is one common example of a "fifth wheel" trailer. However, a bumper hitch trailer is not a gooseneck or fifth wheel trailer and can never qualify for that exemption. A travel trailer that is a fifth wheel does not qualify for the exemption because it is not designed to carry freight or merchandise greater than 1,000 pounds. Likewise, a fifth wheel trailer that has both living quarters and storage does not qualify for the U5 exemption.

11. Is a horse trailer exempt from the use tax if offered for title or first registration?

Horse, livestock, farm or other use trailers that have a bumper hitch design do not qualify for the exemption provided by KRS 139.470(22) and use tax must be collected. A horse, livestock or farm use trailer that meets the description of a gooseneck or fifth wheel, mounted in the back of a truck and designed to carry freight or merchandise greater than 1,000 pounds is exempt by statute just like other similarly designed trailers. The use of the trailer for agricultural purposes is not the deciding factor in determining the exemption. All trailers designed for freight or merchandise as goosenecks or fifth wheels with a proper load capacity are exempt and the exemption code U5 applies for these transactions.

12. Why would a clerk need to make a correction within the same week for use tax paid in error?

Example:

An individual titles a dirt bike purchased from an out-of-state retailer and pays the use tax (code UU) to the clerk and later in the same week returns with a copy of the receipt where sales tax (6%) was paid to the Indiana dealer. A correction may be made in the system as long as it occurs within the same week of the original transaction. If not within the same week, or if the correction can not be entered in the system, please forward the tax documentation and a completed Sales and Use Tax Refund Application (Form 51A209) addressed to Attention: David McKee, Division of Sales and Use Tax, P.O. Box 181, Frankfort, KY 40602.

13. If the customer claims an exemption that later proves to be invalid, will he billed?

It is essential that each county clerk office forward the Out-of-State Purchase - Use Tax Affidavit, (Form 51A280) and related documentation to the Department of Revenue. These documents will be reviewed by the Division of Sales and Use Tax staff. If an exemption is determined to be invalid, the Department will send an inquiry notification or bill to the purchaser claiming the exemption. If tax is due, the bill will also include applicable interest as required by statute. Penalties may also be included on the bill depending upon the circumstances of the exemption claim. In these cases any further responsibilities for additional tax will fall upon the purchaser and not the clerk's office that handled the initial title and/or registration transaction.

14. How are the Out-of-State Purchase-Use Tax Affidavits forwarded to Frankfort?

These affidavits and related documentation should be bundled separately and forwarded with all other Motor Vehicle Usage Tax and Sales Tax information.

15. What is the clerk's responsibility regarding the occasional sale exemption?

It is not the clerk's duty to solicit exemptions. The system will default to collection of the use tax (UU) unless the customer claims an exemption. If the customer claims a purchase qualifies as an occasional sale because the boat, manufactured home, camping trailer, ATV etc. was purchased out-of-state from an individual and not from a retailer, then the customer should complete the Out-of-State Purchase-Use Tax Affidavit (Form 51A280) and the clerk should forward the information to Frankfort. The Division of Sales and Use Tax will review the information provided. If the Department of Revenue determines through further research that the sale does not qualify as an occasional sale, the Department will bill the purchaser who claimed the exemption for applicable tax, interest and penalty.

16. What codes are used and what documentation is required to support a customer's claim on Form 51A280, Out-of-State Purchase – Use Tax Affidavit?

Occasional Sale (U1)

Resale Certificate (U2) - Attach Form 51A105

Purchase Exemption (U3) - Attach completed Form 51A126.

Agricultural Exemption (U4) - Attach completed Form 51A158

Fifth Wheel Trailer (U5) – KRS 139.740(22), Trailer mounted in a truck bed and designed for carrying freight > 1,000 lbs.; does not include bumper hitch trailers.

Credit for Sales Tax Paid to Another State (U8) - Attach copy of receipt.

Credit for Kentucky Use Tax Previously Reported and Paid (UC) - Attach copy of receipt.